

HOUSE BILL REPORT

2SSB 6702

As Reported by House Committee On:
Education
Ways & Means

Title: An act relating to providing education programs for juveniles in adult jails.

Brief Description: Providing education programs for juveniles in adult jails.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kline, McAuliffe, Gordon, McDermott, Fraser, Shin and Kohl-Welles; by request of Superintendent of Public Instruction).

Brief History:

Committee Activity:

Education: 2/19/10, 2/23/10 [DP];

Ways & Means: 2/27/10 [DP].

Brief Summary of Second Substitute Bill

- Provides for a program of education for juveniles under the age of 18 who are confined in adult jails.
- Sets forth the responsibilities of school districts and adult jail facilities.
- Requires school districts and adult jail facilities to negotiate and execute contracts and specifies provisions which must be included in such contracts.
- Requires the Office of Superintendent of Public Instruction (OSPI) to adopt rules regarding the program of education for juveniles confined in adult jails, specifies parameters regarding these rules, and requires the OSPI to collaborate with the Washington Association of Sheriffs and Police Chiefs and attempt to negotiate rules.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass. Signed by 8 members: Representatives Quall, Chair; Maxwell, Vice Chair; Hunt, Liias, Orwall, Probst, Santos and Sullivan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 5 members: Representatives Priest, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dammeier, Fagan and Johnson.

Staff: Cece Clynch (786-7195).

Background:

Provisions are made in statute for educational programs for juveniles confined in state adult correctional facilities, state institutions for juvenile rehabilitation, and county juvenile detention facilities. No specific statutory provision is made for educational programs for juveniles confined in adult jails.

Adult Correctional Facilities Maintained by the Department of Corrections.

School districts, educational service districts, or any combination thereof are identified as the primary providers of the educational program (program) for juvenile inmates in adult correctional facilities run by the Department of Corrections (DOC). Higher education institutions or other qualified entities may contract to provide all or part of the program if no school district or educational district is willing to operate such a program.

These educational programs are for inmates under 18 years of age. Students who are 18 years of age and have participated in such an educational program may continue in the program with the permission of the DOC and the educational provider.

The DOC provides the facilities, utilities, and security staff. The educational provider employs the teachers and furnishes the textbooks and curriculum. The DOC and the provider negotiate and execute a written contract for each school year, or such longer period as agreed upon.

By April 15 of each year the DOC must provide notice to the district superintendent of any foreseeable facility closure, reduction in numbers of juvenile inmates under 18 years of age, or any other cause for a reduction in the school district's staff for the next school year. If the DOC fails to provide such notice, it is liable and responsible for the payment of the salary and employment related costs of each school district employee whose contract the district would have nonrenewed but for the failure to notify. Disputes regarding failure to notify must be resolved pursuant to the alternative dispute method set forth in the contract.

In an opinion issued in 2000 the Washington Supreme Court held that this statutory framework put in place by the Legislature satisfied constitutional requirements.

State Institutions for Juvenile Rehabilitation.

The Department of Social and Health Services (DSHS) and certain school districts in the state must provide a program of education for residents who have been admitted pursuant to the Juvenile Justice Act to state institutions for juvenile rehabilitation such as Green Hill, Maple Lane, Naselle Youth Camp, and the like. Although a juvenile offender may not be committed to a juvenile correctional facility beyond his or her twenty-first birthday, there are circumstances under which a juvenile may remain under the authority of the DSHS beyond

his or her eighteenth birthday. The educational program is for residents who are less than 21 years of age and have not met high school graduation requirements.

The school district within which the facility is located is responsible for provision of the educational program. School districts may utilize the services of an educational service district. The school district provides the teachers, administrators, textbooks, and curriculum. The DSHS is responsible for the facilities, furnishings, utilities, and such.

Pursuant to the statutory framework, the DSHS and the district negotiate and execute a contract for each school year, or such longer period as agreed upon. By April 15 of each year the DSHS must provide notice to the district superintendent of any foreseeable facility closure or reduction in numbers or any other cause for a reduction in the school district's staff for the next school year. If the DSHS fails to provide such notice, it is responsible for the payment of the salary and employment related costs of each school district employee whose contract the district would have nonrenewed, but for the failure to notify.

County Juvenile Detention Facilities.

Construction, acquisition, and maintenance of a juvenile detention facility is a mandatory function of counties. In an opinion issued in 1982 the Washington Supreme Court held that education must be provided in juvenile detention facilities and that it was the responsibility of the counties to provide that education. Subsequently, in 1983 the Legislature provided by statute a program of education to be provided by the counties and the school districts for juveniles confined in these detention facilities. The duties, authority, and liabilities mirror those set forth in the statutes governing the state institutions for juvenile rehabilitation, except that the counties assume the DSHS role.

Summary of Bill:

Legislative intent is expressed to provide for the operation of education programs for juvenile inmates incarcerated in adult jails. Findings are made that these new statutory provisions fully satisfy any constitutional duty to provide education programs for juvenile inmates in adult jails and that biennial appropriations for education programs made pursuant to this new statutory framework amply provide for any constitutional duty to educate juvenile inmates in adult jails.

The program of education is to be made available by the adult jail facilities and the school districts of the state for persons under the age of 18 who have been incarcerated in any adult jail facility. Each school district within which such a jail facility is located must provide the program of education, either singly or in concert with another district. Districts may contract with educational service districts, community and technical colleges, four-year institutions of higher education, or other qualified entities to provide all or part of the program.

The school district must supply the teachers, administrators, and textbooks. The district or educational provider must also:

- provide the educational program in accordance with program standards established by the Office of Superintendent of Public Instruction (OSPI);

- expend funds appropriated, granted, or gifted for the direct and indirect costs of maintaining and operating the program for the exclusive purpose of maintaining and operating such programs;
- provide educational services to juvenile inmates within five school days of receiving notification from an adult jail facility within the district's boundaries that an individual under the age of 18 has been incarcerated; and
- develop the curricula, instruction methods, and educational objectives subject to applicable requirements of state and federal law. For inmates under the age of 18 who have not met high school graduation requirements, appropriate courses of instruction and school-related student activities shall be provided by the district to the extent that it is practical and judged appropriate by the district and the administrator of the adult jail facility.

In the course of providing the educational program in an adult jail, districts may:

- award appropriate diplomas or certificates to juvenile inmates who successfully complete graduation requirements;
- allow students 18 years of age who have participated in an education program in an adult jail to continue in the program, under rules adopted by the OSPI; and
- spend only funds appropriated by the Legislature, allocated by the OSPI, or gifted or granted for such a program. A district may not expend excess tax levy proceeds authorized for school district purposes to pay costs of such a program.

The adult jail facility is responsible for providing:

- necessary instructional and exercise spaces for the education program that are safe and secure;
- equipment deemed necessary by the adult jail facility to conduct the education program;
- a clean and appropriate classroom environment that is sufficient to meet the program requirements and consistent with security conditions;
- appropriate supervision to safeguard both the education providers and the juvenile inmates;
- such other support services and facilities deemed necessary by the adult jail facilities to conduct the education program;
- the available medical and mental health records necessary for the school district to make a determination regarding the educational needs of the juvenile inmates; and
- notice to the district in which the facility is located within five school days that an eligible juvenile inmate has been incarcerated in the jail facility.

Each education provider and adult jail facility must negotiate and execute a written contract for each school year, or such longer period as may be agreed to, that delineates their respective duties and provides for dispute resolution through mediation and, if necessary, arbitration. A contract may provide for the performance of additional duties by an education provider, including those duties imposed upon the jail facility, if supplemental funding is available to fully pay the direct and indirect costs of the additional duties.

By September 30, 2010, districts, in coordination with adult jail facilities located within their boundaries, must submit an instructional service plan to the OSPI. These plans must meet the requirements set forth in the OSPI's rules. Once a district has submitted a plan, it is not

required to resubmit unless there is a significant change to the plan. An adult jail facility must notify the OSPI as soon as practicable upon the closure of any adult jail facility or upon the adoption of a policy that no juvenile shall be held in the adult jail facility.

The OSPI's rules may not govern requirements regarding security within the jail facility. Additionally, these rules may not govern the physical facility of the adult jail or the classroom space chosen for instruction. Any excess costs to the jails associated with implementing the rules must be negotiated pursuant to the contractual agreements between the education provider and the adult jail facility. The contractual agreements must also include provisions regarding costs associated with technology access, transportation, and student medical or learning assessments.

The OSPI is tasked with allocating the money appropriated by the Legislature for this purpose to school districts that have assumed the primary responsibility to administer and provide the educational program or to the educational service district operating the program under contract. The OSPI must also adopt rules establishing the reporting, compliance, audit, and other accountability requirements necessary for implementation. In adopting the rules, the OSPI must collaborate with representatives from the Washington Association of Sheriffs and Police Chiefs and must attempt to negotiate rules that deliver the educational program in the most cost-effective manner while, to the extent practicable, not imposing additional costs on local jail facilities.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are differences between the House and Senate versions reflecting the fact that this affects schools as well as counties and local jails. It is a work in progress. The counties and local jails need to have authority over the space since these are their facilities. The OSPI, the Washington Association of Sheriffs and Police Chiefs, and the counties have been working in good faith on this. The state has a constitutional duty to provide an education to these juveniles. Because the population of juveniles in adult jails is low and unpredictable it makes it more difficult to put a program in place but this is the paramount duty. These juveniles need an education and this issue needs to be addressed right away.

(In support with concerns) This bill stems from a lawsuit that was brought in Pierce County which has since settled. In that case, the youth in the jail asked for educational services. Three changes should be made to this bill. School districts should not be allowed discretion with respect to the awarding of diplomas. The five school day notice period should be reduced to three school days. That is plenty of time to give notice. There should be a 180-

day school year requirement. Without this, it is possible that the educational program is only a weeklong program.

(Other) The counties recognize that these juveniles do need an education. The Pierce County situation has been settled and there is an interlocal agreement in place. The changes made to section 6 strike a better balance and deal realistically with the situation in jails. With these changes, the fiscal note that will be submitted by local government will be significantly reduced. This bill provides a good, solid, appropriate framework for an education program for juveniles in adult jails. The bill keeps youth as the focus. Only about 100 juveniles statewide are in adult jails. This framework will work for these youth and the local entities.

Persons Testifying: (In support) Christie Perkins, Washington State Special Education Coalition; and Kathleen Sande, Office of Superintendent of Public Instruction.

(In support with concerns) Gavin Thornton, Columbia Legal Services.

(Other) Brian Enslow, Washington State Association of Counties; and Jo Arlow, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

Staff: Wendy Polzin (786-7137).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Education:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) None.

(Other) Local jails and local governments recognize their responsibility for educating youth in their custody. This substitute bill goes further than the original bill. The Senate budget includes language that funding provided is sufficient to cover all costs associated with this bill. The legislation stems from a lawsuit between Pierce County and Columbia Legal Services, which has now been settled. The constitutional mandate to provide a basic education was clarified in this lawsuit.

(Opposed) None.

Persons Testifying: (Other) Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Brian Enslow, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.